

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 89-5-S

TO: ALL INTERESTED PARTIES

SUBJECT: Pooled Income Funds

General Background:

The Bureau has received several requests that it determine various pooled income funds sponsored by various charitable, educational or non-profit entities do not involve the offer or sale of securities or, in the alternative, that such funds and the persons selling them are exempt from the registration requirements of the Securities Act, 1964 PA 265, as amended (the "Act").

In response, the Bureau has found that such offerings involve the offer and sale of securities but that approval of the offering documents and the issue of agent exclusion orders is not required by the public interest or for the protection of investors under certain conditions stated in SEC Release 6175 pursuant to the Securities Act of 1933.

Action or Interpretation:

The Bureau will take a position similar to that of the SEC in Release 6175 with the respect to the creation and operation of pooled income funds.

The circumstances in which the Bureau will take a no-action position are as follows: (1) the fund qualifies as a recipient of tax deductible contributions under Section 642(c)(5) of the Internal Revenue Code of 1954 (the "Code"); (2) each prospective donor is furnished with written disclosures which fully and fairly describe the operation of the fund; (3) any person soliciting contributions to the fund is either a volunteer, or a person who is employed in the public charity's overall fund-raising activities and who is not compensated on the basis on the amount of gifts transferred to the fund; (4) and the fund meets the qualifications for the charitable exemption contained in Section 402(a)(8) of the Act.

Pooled income funds meeting the above safe harbor requirements need not make any filing with the Bureau. However, the Bureau takes the position that the offer and sale of interests in such pooled income funds constitute the offer and sale of securities and that the anti-fraud provisions contained in Section 101 of the Act apply to the offer and sale of such interests.

AUTHORITY:

Act 265 of 1964, Section 413(f).

Signed by Carl L. Tyson, Director
Corporation & Securities Bureau
Dated: March 28, 1989